

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 07-N-10224-DFM</b>
<b>JOHN FREELAND WANVIG,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
<b>Member No. 120390,</b>	)	<b>RECOMMENDATION AND ORDER OF</b>
<b>A Member of the State Bar.</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>

**I. INTRODUCTION**

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent John Freeland Wanvig failed to comply with rule 955 of the California Rules of Court<sup>1</sup> as ordered by the Supreme Court. The State Bar was represented by Christine Souhrada. Respondent participated intermittently in the proceedings.

For the reasons stated below, it is recommended that respondent be disbarred.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed and served on respondent on February 22, 2007, by certified mail, return receipt requested, at the address then-shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code §6002.1, subd. (c)<sup>2</sup>; Rules Proc. of State Bar, rules 60(b) and 583.) However, the address on the envelope was incomplete and the correspondence was returned as undeliverable.

On March 6, 2007, the State Bar Court properly served respondent by first-class mail, postage prepaid at his official address with a notice scheduling a status conference on March 21,

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<sup>1</sup>Future references to rule are to this source. Rule 955 was renumbered as rule 9.20 effective January 1, 2007.

<sup>2</sup>All references to section are to this source.

2007.

On March 19, 2007, the State Bar located and contacted respondent by telephone. Respondent advised that he had relocated to Washington. He was faxed a copy of the NDC and a notice setting a status conference on March 21, 2007.

On March 19, 2007, the NDC was properly served on respondent at his then-official address by certified mail, return receipt requested. Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned unclaimed.

Respondent participated by telephone at the March 21 status conference. A further status conference was scheduled on May 2, 2007. On March 27, 2007, an order memorializing the March 21, 2007 status conference was properly served on him at his then-official address.

On April 12, 2007, the State Bar, after various attempts to contact respondent by telephone, sent him a letter by fax and by mail asking him to contact the Deputy Trial Counsel. There was still no contact from respondent. Accordingly, the State Bar sent him a resignation package.

On April 20, 2007, respondent left a message for the Deputy Trial Counsel and they spoke on April 23, 2007.

On April 26, 2007, respondent faxed to the Deputy Trial Counsel a response to the NDC. He attempted to file this response with the State Bar Court but, on May 8, 2007, it was rejected for filing due to procedural deficiencies.

On April 26, 2007, respondent also filed his compliance declaration pursuant to rule 955 of the California Rules of Court.

Respondent participated telephonically at the May 2, 2007, status conference. A further status conference was scheduled on June 4, 2007, as were other dates relating to this case. On May 7, 2007, he was properly served at his official address with an order memorializing these events.

The Deputy Trial Counsel left voicemail messages for respondent on May 15, 22 and 25, 2007, but he did not contact her.

Respondent did not file a response to the NDC. On May 29, 2007, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek his disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not participate in the June 4, 2007, status conference. On June 14, 2007, he was properly served at his official address with an order memorializing it.

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on June 29, 2007, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that this correspondence was returned unclaimed.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers* (2006) 547 U.S. 220, 237-238.)

The matter was submitted for decision without hearing after the State Bar filed a brief on July 10, 2007.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 10, 1985, and has been a member of the State Bar at all times since.

## **B. Facts**

On April 18, 2006, the California Supreme Court filed an order, number S140947 (order), in State Bar Court case no. 04-O-11304 in which respondent was ordered, among other things, to be actually suspended for 60 days and until he complied with rule 205, Rules Proc. of State Bar. If he was actually suspended for 90 days or more, he was also ordered to comply with rule 955(a) and (c) within 120 and 130 days, respectively, of the effective date of its order. The order was effective on May 18, 2006. (Rule 953(a).<sup>3</sup>)

The Supreme Court promptly sent respondent a copy of its order.<sup>4</sup> Respondent received the order. A copy of it also was attached to the NDC in the instant proceeding.

Respondent remained actually suspended for more than 90 days. Therefore, he was required to comply with rule 955(a) and (c) by September 15 and 25, 2007, respectively.

Respondent did not file with the State Bar Court the declaration of compliance with rule 955(c) until April 26, 2007. He has offered no explanation for his untimely noncompliance with rule 955(c).

## **C. Legal Conclusions**

There is clear and convincing evidence that respondent wilfully violated the Supreme Court's order directing his compliance with rule 955.<sup>5</sup> This constitutes a violation of rule 955(d), which makes the wilful noncompliance with the provisions of rule 955 a cause for disbarment,

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<sup>3</sup>This rule was renumbered as rule 9.18 effective January 1, 2007.

<sup>4</sup>Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court (formerly numbered as rule 29.4(a)) requires the Clerk to promptly transmit a copy of all opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent promptly after its filing.

<sup>5</sup>Wilfulness in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep his official address current prevented him from learning that he had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

suspension or revocation of probation, in relevant part.

#### **IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>6</sup>, std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously noted, in S140947, the Supreme Court imposed discipline consisting of one year's stayed suspension and actual suspension for 60 days and until respondent complied with rule 205, Rules Proc. of State Bar, among other things. In that default matter, respondent was found culpable of violating rule 3-110(A) and section 6106 in one client matter. In aggravation, the court considered respondent's lack of participation prior to the entry of default. His blemish-free disciplinary record for 17 years was considered a significant mitigating factor.

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

#### **V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

#### **VI. LEVEL OF DISCIPLINE**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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<sup>6</sup>Future references to standard or std. are to this source.

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; former rule 955(d) (now rule 9.20(d)).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. (*Bercovich v. State Bar, supra*, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He did not participate in this or in the prior disciplinary proceeding. More importantly, respondent's noncompliance with rule 955 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his unexplained wilful disobedience of the Supreme Court's order.

#### **VII. DISCIPLINE RECOMMENDATION**

It is hereby recommended that respondent John Freeland Wanvig be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in rule 9.20(c) within 40 days of the effective date of the order showing his compliance with said order.

#### **VIII. COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and

Professions Code section 6140.7 and as a money judgment.

**IX. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October 10, 2007

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DONALD F. MILES  
Judge of the State Bar Court